



THE COMMITTEE ON ENERGY AND COMMERCE

INTERNAL MEMORANDUM

September 13, 2011

To: Members of the Subcommittee on Commerce, Manufacturing, and Trade

From: Majority Staff

Re: Hearing on Internet Privacy: The Impact and Burden of EU Regulation

On Thursday, September 15, 2011, the Subcommittee on Commerce, Manufacturing, and Trade will hold a hearing entitled “Internet Privacy: The Impact and Burden of EU Regulation.” The hearing will take place at 9:30 a.m. in 2322 Rayburn House Office Building. At the hearing, the Subcommittee will examine the European Union’s (EU) privacy and data collection regulations and how they have impacted the Internet economy. The following provides background on the hearing witnesses, as well as some general information on the EU privacy directive.

I. WITNESSES

The Honorable Nicole Lamb-Hale
Assistant Secretary
International Trade Administration (ITA)

Catherine Tucker
Douglas Drane Career Development Professor in IT and Management
and Associate Professor of Marketing
MIT Sloan School of Management

Stuart Pratt
President
Consumer Data Industry Association

Paula J. Bruening
Deputy Executive Director and Senior Policy Advisor
The Center for Information Policy Leadership

Peter Swire
C. William O’Neill Professor of Law
Moritz College of Law of the Ohio State University

II. EU PRIVACY DIRECTIVE BACKGROUND

On October 24, 1995, the EU agreed to the Data Privacy Directive (Directive 95/46/EC). Its purpose is to harmonize differing national legislation on data privacy protections within the EU, while preventing the flow of personal information from the EU to outside countries that in their view lack “adequate” privacy protections. It applies to all organizations - public and private - operating in the EU, including affiliates of U.S. corporations. The Directive requires all EU member states to enact national privacy legislation which satisfies certain baseline privacy principles. These principles include:ⁱ

- **Notice:** subjects whose data is being collected must be given notice of such collection.
- **Purpose:** data collected should be relevant to the purposes for which they are to be used.
- **Consent:** personal data should not be disclosed or shared with third parties without consent from the data subject or by the authority of law.
- **Security:** once collected, personal data should be protected by reasonable security safeguards.
- **Disclosure:** subjects whose personal data is being collected should be informed which party or parties collect their data.
- **Access:** subjects should be granted access to their personal data and allowed to correct any inaccuracies.
- **Accountability:** subjects should be able to hold personal data collectors accountable for adhering to all seven of these principles.

While these principles are the basis for the Directive, each EU member state is responsible for incorporating these articles into its own national privacy laws. This, in turn, has led to inconsistent regulatory regimes throughout the EU and has created problems for American multinational firms.

III. SAFE HARBOR

In order to help U.S. companies channel the different privacy approaches, authorities in the U.S. and Europe negotiated a "safe harbor" arrangement in 2000. Under the safe harbor, U.S. companies can voluntarily adhere to a set of data protection principles recognized by the EU as meeting the requirements of the Directive. The U.S. Department of Commerce manages the list of firms that have met the requirements of the safe harbor. The requirements of the safe harbor can be found on the Department of Commerce website, www.export.gov.ⁱⁱ

Even with the safe harbor agreement in place, U.S. companies continue to face a number of challenges. Compliance within the EU remains fractured, with several member states not fully complying with the Directive. Additionally, industry observers argue EU enforcement is sporadic and inconsistent, with a seemingly disproportionate number of American companies targeted for compliance violations. These challenges facing U.S. businesses in the European theater and the lessons learned from the EU experience will be closely examined at the hearing.

Please contact Gib Mullan, Shannon Weinberg, Brian McCullough, or Jeff Mortier at 5-2927 if you have any questions regarding the hearing.

ⁱ These principles are based on the 1980 OECD "Recommendations of the Council Concerning Guidelines Governing the Protection of Privacy and Trans-Border Flows of Personal Data."

ⁱⁱ http://export.gov/safeharbor/eu/eg_main_018476.asp